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Paper No. 5

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MAY 28 2002

In re Application of
Udo Schutz
Application No. 10/017,057
Filed: February 12, 2002
Attorney Docket No. PR-37

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the Petition filed February 12, 2002, which is properly considered as a petition under 37 CFR §1.53(e)(2) to accord the above-identified application a filing date of December 14, 2001, with 8 figures of drawings as part of the original application disclosure.

Application papers in the above-identified application were filed on December 14, 2001. However, on January 14, 2002, the Initial Patent Examination Division (IPED) mailed a "Notice of Omitted Items in a Nonprovisional Application," advising applicant that a filing date had been accorded; however, Figures 2-8 described in the specification appeared to have been omitted from the application.

In response, applicant filed the instant petition respectfully pointing out that all 8 figures of the above-identified application were submitted with the original application. A copy of the eight (8) sheets of drawings containing Figures 1-8 was resubmitted on petition. In support of the petition, applicant submitted a copy of their return postcard receipt. This postcard receipt identified this application by serial number, itemized "Drawing ☒(8 sheets)"¹ among the enclosures, bore a United States Patent and Trademark Office receipt date-stamp of December 14, 2001, and lacked any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. Applicant has shown that the application as filed on December 14, 2001, included eight sheets of drawings. A comparison of the drawings presently accorded a filing date of December 14, 2001 and the drawings resubmitted on petition reveals that the Figure 1 present in the application is the wrong drawing. The eight sheets of drawings resubmitted on petition are those identified on the postcard and include Figures 1-8, as alleged and will be used in processing of this application. Thus, the application is entitled to a filing date of December 14, 2001, with Figures 1-8 as part of the original application disclosure.

In view thereof, the petition is **GRANTED**.

¹ The notation "☒(8 sheets)" is handwritten on the postcard. The Office is relying on petitioner's duty of good faith and candor in accepting that this is a true copy of the postcard as filed.

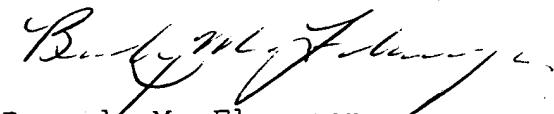
Given the basis for granting the petition, the petition fee is being refunded by Treasury Check under separate cover.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of December 14, 2001, using the application papers received in the Office on that date and the drawing sheets containing Figures 1-8 resubmitted on petition filed February 12, 2002 and indication in the records of the USPTO that eight (8) sheets of drawings were present on filing;
- rescanning of the correct Figure 1 in this application. The Figure 1 originally made of record in this application is incorrect. The Figure 1 resubmitted on petition filed February 12, 2002 is the Figure 1 in this application.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy